

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

MFA.No. 196 of 2001(D)

O.P(MV).NO.200/1998 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

APPELLANT/ PETITIONER:

RAVI, S/O. VELAYUDHAN, AGED 1 YEARS,
RESIDING AT PADICKASSERIL HOUSE, MANNOOR,
IRAPURAM VILLAGE, KUNNATHUNADU TALUK.

BY ADV. SRI.K.JAJU BABU,
ADV. SRI.M.V.BIPIN.

RESPONDENTS/ RESPONDENTS:

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1. P.K. KRISHNAN UNNI, S/O. GOPALAN NAIR,
PALATHU HOUSE, THIRUVANIYOOR.P.O.,
KOZHIKODE.
 2. RAVEENDRAN @ RAVI, S/O. ANDI,
KAITHAKUNNEL HOUSE, PUTHOOR VILLAGE,
KOZHIKODE DISTRICT.
 3. UNITED INDIA INSURANCE CO. LTD.,
THAMARASSERY.
 4. MOHANAN, S/O. KRISHNAN, MANJANGAL HOUSE,
MANOOR, KEEZHILLAM.

M.F.A. NO. 196/2001-D:

5. THE NEW INDIA ASSURANCE CO. LTD.,
MUVATTUPUZHA.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM),
SRI.R.JAYAKRISHNAN,
SRI.THOMAS MATHEW NELLIMOOTTIL,
SRI.JOHN KOSHY.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A. No. 196 of 2001

Dated this the 30th day of October, 2007

Judgment

Koshy,J.

Appellant while travelling in an autorickshaw bearing registration No. KL 7/C 7441 from Mannoor to Muvattupuzha, a mini bus bearing registration No. KL 11/B 1405 came from the opposite direction hit against the autorickshaw as a result of which the appellant and others sustained injuries. According to the appellant, the accident occurred due to the rash and negligent driving of the mini bus driver through wrong side in an exorbitant speed. First respondent was the owner, second respondent was the driver and third respondent was the insurer of the mini bus involved in the accident. Fourth respondent was the owner-cum-driver and fifth respondent was the insurer of the autorickshaw. Appellant claimed compensation of Rs.3,50,000/-. The tribunal awarded only Rs.35,000/-. The tribunal found that both drivers were negligent and apportioned 75% negligence on the part of the driver of the bus insured by the third respondent insurance company and 25% on the

part of the driver of the autorickshaw insured by the fifth respondent insurance company. Only quantum of compensation is disputed in this appeal.

2. With regard to the injuries the tribunal found as follows:

"Ext.A8 is the wound certificate issued from the Medical Trust Hospital, Ernakulam specifying in detail the various injuries sustained to the petitioner in the accident. The evidence shows that immediately after the accident he was taken to the Medical Trust Hospital, Ernakulam. He was conscious, restless and disoriented. At the time of admission, smell of alcohol observed in breath. He had multiple contused abrasions on the right side of forehead, nose, right shoulder, chest. There was bleeding from the mouth. He had contused abrasions with tenderness of right knee. He had multiple abrasions on both knees, right leg and pain on the right hip. X-ray shown dislocation of right hip with protusion. He was treated as an inpatient in the hospital for 14 days. Ext.A9 discharge certificate was issued from the Medical College Hospital, Kottayam. The petitioner was taken to the Medical College Hospital, Kottayam and was treated there. Ext.A10 is also a discharge certificate. The fracture floor of right acetabulum was noted. He was treated by skeletal traction. Ext.A11 is also a medical certificate from the Medical College Hospital, Kottayam. Ext.A12 series are the medical bills evidencing the expenses incurred for medical treatment as Rs.9006/-. Ext.A20 is a disability certificate issued from the Medical College Hospital, Kottayam assessing 5%

disability to the petitioner. The doctor examined the patient on 13.7.2000. The doctor observed that he was complaining of pain right hip, difficulty in walking for long time and climbing stairs. He cannot squat or do heavy work with right lower limb. He walks with a limbing gait. There is 1 c.m. shortening of the right lower limb. The movements of the right hip is painful and restricted. Flexion is possible upto 100 degree abduction only upto 15 degree rotations were also restricted. There is wasting of hip and thigh muscles on right side. On these reasons the doctor certifies 5% disability to the petitioner. The doctor who has issued the disability certificate was examined as PW6. According to PW6, this is a permanent disability. Considering the various factors compensation has to be fixed. It is let in from the evidence that the petitioner is working as a coolie labourer. What exactly was his monthly earning was not disclosed from the evidence. In the accident the petitioner had fracture to the acetabulum right side. The treatment given was skeletal traction and rest for a few months. The petitioner had no complicated treatment. The disability assessed is only 5%."

But, no compensation was awarded for disability and loss of earning power. Claimant was a coolie by profession. He was aged 39 years and was maintaining a family. The tribunal has fixed only Rs.1,500/- as the monthly income. Even a non-earning person's income is fixed by the second schedule in 1994 as Rs.1,250/- per month (Rs.15,000/- per year). Appellant was not a non-earning person.

Even an unskilled worker in Kerala would get Rs.100/- per day in 1997. In any event, he may get more than Rs.2,000/- a month. Hence, we fix Rs.2,000/- as his monthly income. He was aged 39 years and taking guidance from the second schedule, we fix 15 as the multiplier. Then compensation payable for 5% permanent disability and loss of earning power will be $\text{Rs.}2000 \times 12 \times 15 \times \underline{5} = \text{Rs.}18,000/-$. The tribunal awarded

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only Rs.6,000/- for loss of actual earnings finding that he was under treatment for four months. Since we have increased the monthly wages from Rs.1,500/- to Rs.2,000/-, he is entitled to Rs.2,000/- more on that count. We are of the view that compensation granted under other heads are reasonable. Additional compensation over and above the decreed amount payable is Rs.20,000/-. In view of the apportionment of negligence on the bus driver and autorickshaw driver in the ratio of 75:25, third respondent insurance company shall deposit Rs.15,000/- and fifth respondent shall deposit Rs.5,000/-. They are liable to deposit 7.5% interest on the respective amounts from the date of application till its deposit. On

deposit of the compensation, appellant is allowed to withdraw the same.

**J.B.KOSHY
JUDGE**

**K. HEMA
JUDGE**

vaa

**J.B. KOSHY AND
K.HEMA,JJ.**

M.F.A. No. 196 of 2001

Judgment

Dated 30th October, 2007